

[Conferences]
Canada, Federal-Provincial Conference on the Native
People and the Criminal Justice System,

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ONTARIO PROPOSALS

FEDERAL-PROVINCIAL CONFERENCE

ON

THE NATIVE PEOPLE AND THE CRIMINAL JUSTICE SYSTEM

ALLIED INDIAN AND METIS SOCIETY

ASSOCIATION OF IROQUOIS AND ALLIED INDIANS

GRAND COUNCIL TREATY NUMBER NINE

GRAND COUNCIL TREATY NUMBER THREE

ONTARIO FEDERATION OF FRIENDSHIP CENTRES

ONTARIO METIS AND NON-STATUS INDIAN ASSOCIATION

ONTARIO NATIVE WOMEN'S ASSOCIATION

UNION OF ONTARIO INDIANS


Edmonton; February 3, 4, 5, 1975

ONTARIO PROPOSALS

FEDERAL - PROVINCIAL CONFERENCE

ON

THE NATIVE PEOPLE AND THE CRIMINAL JUSTICE SYSTEM



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"We want our people, as they have always done, to be able to slowly develop a system which weaves your proposals into ours. This our people will respect, and this they will cherish, because it will be ours - not something forced on our people as has been the pattern."

Alfred Rael, Governor of Picuris,
Testimony before Senate Sub-Committee
on Constitutional Rights.
Albuquerque, New Mexico, 1969.

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We wish to thank those people who made possible both this brief and the forum it will be presented at.

In particular, those Federal and Provincial Ministers who have chosen to take part in our deliberations, and who will listen, deserve our congratulations.

The number of native people before the courts and in correctional institutions in Ontario is far out of proportion to the percentage of the population they represent.

Native people often find themselves in courtrooms where they understand neither the legal principles nor the procedures and formalities that enter into play around them.

The police are often biased and exhibit little or no understanding of native culture or character. The present remedies which the law provides are not responsive to native values; fines are meaningless to people who have little money. Jails do not rehabilitate, but tend to create professional criminals. The criminal justice system places little emphasis on reconciliation.

Parole and after-care services are practically non-existent. Where they do exist, they are controlled by people with no real understanding of native problems.

Native communities rarely have viable economic bases. This is largely due to a history of government inaction. The people have often lost their pride, and in the face of poverty, alienation, anger, frustration and discrimination, turn to alcohol and eventually come into conflict with the law. The causes of the problems lie deeper than the individuals, in the social and economic roots of the communities themselves.

The deliberate extermination of native cultural integrity by government, church and educational institutions is a major contributing factor to the increasing native involvement with the criminal justice system.

The criminal justice system is culturally biased in almost every phase of its operation. The people do not want to be changed to fit the system. Minor changes are not enough. An entirely different path is needed.

PREAMBLE:

- 1) It has been our experience that any established program or institution which had as its goal to serve our people has led to a depending situation on the part of the people so served.

All the programs we propose in this brief should have the same proportion of native control as there is native involvement in them. If a program is entirely for native people, it should be run entirely by native people.

- 2) The problems are not restricted to the reserve communities or to "status" Indians. Neither are our recommendations, unless specifically provided otherwise, our proposals apply to reserves, non-reserve communities and urban areas, and to both "status" and "non-status" native people.

- 3) One conference on the native people and the criminal justice system is not enough. There must be continuous consultation on a formal basis between the government departments that form and control the system and the native organizations that represent the people who will be subjected to that system.

We propose that, in Ontario, a permanent committee be established to continue this consultation process. The native participants will be one representative from each of: Grand Council Treaty Number Nine; Grand Council Treaty Number Three; Association of Iroquois and Allied Indians; Ontario Metis and Non-Status Indians Association; Native Women's Association; Federation of Friendship Centres; or their successor organizations. The government representatives should be from the Ministries of Corrections, of the Attorney-General, and of the Solicitor-General. They must be people at a level where they have real influence in the policy and decisions that are made.

Anything less than full consultation will surely lead to a continuation of past mistakes by the government of Ontario.

A similar process of consultation on the Federal level must be established, with full participation by the Federal Government departments involved, specifically the Department of Justice and the Department of the Solicitor-General.

These consultations will ensure a respectable response from both governments and native organizations, which, without an ongoing mechanism for the articulation of the needs of native people, have until now accepted little of the responsibility that is theirs.

- 4) Native women shall have equal opportunity for employment in all phases of the criminal justice system.
- 5) The Federal and Provincial governments must support these proposals in a number of ways. No program may be allowed to fail through lack of legislative implementations or financial support or through bureaucratic delay.

PREVENTION:

- a) The disintegration of the community leads to alienation and to antisocial behaviour. To reaffirm a sense of community within native groups and communities, programs to maintain and develop the integrity and viability of the community as a social unit should be encouraged. This would also lessen the pressure to migrate to the cities.
- b) At the same time, economic programs compatible with native culture must be supported to provide a solid economic base and employment. Both programs in social community and economic development have little direct relation to the system of criminal justice, but the influence of community disintegration and economic despair are so great on the individual's involvement with that criminal justice system that they cannot be overlooked in considering the factors within the system itself. We do not at this time propose to enter into a detailed discussion of these programs, since the needs and the types of programs are obvious enough, but merely to warn that an attempt to reform the treatment of the offender without removing the cause of the offence would be to ignore the real problems.
- c) Perhaps the major problem in the cycle of native involvement with the criminal justice system is that of alcohol. This problem is too vast to be dealt with in a conference that concentrates on the institutions and participants in a broad system, but is too much a part of the roots of the problem to be ignored. We therefore propose that the government support the newly-formed Ontario Native Drug and Alcohol Council and all future native programs to alleviate the problems of alcohol and drug abuse.
- d) Youth and leadership programs should be supported so that the native people can take over programs now run within their communities by outsiders. This is a major part of the strengthening of the community and would also divert people, either directly or by example, away from criminal involvement.

- e) Programs promoting Indian language, culture, heritage and religion within the school system and outside, have become necessary at this point to strengthen a sense of cultural identity and pride that has in part been lost.
- f) Recreation and sports programs for the young people, who are the most vulnerable to criminal involvement, and who represent the hope for the future, must be promoted.
- g) The non-native population, through its ignorance of native ways and culture, sometimes causes friction with native communities. A program of education of the general public on native culture and people would alleviate some of this friction.
- h) At the same time, since the native people are faced with the existing legal system, efforts should be made to educate them about its workings and about the law in general. Pamphlets, radio shows, television and books may be helpful, but the people who have least understanding of the system also have no radio or television, and books have little relevance. Perhaps the use of para-legal people to travel from place to place explaining the system would be helpful; during such a necessarily long period of education, great flexibility is needed in every aspect of the application of the law.
- i) The availability of Legal Aid is often unexplained, and native people would also find a program of education about legal aid useful. The same problems apply to this program in terms of delivery; isolation, time, availability of personnel.

In particular, it often seems to native people (and to others as well), that a Legal Aid lawyer is bound to be a poor lawyer, who will not try very hard or will not be very good. Legal Aid must make clear both its availability and the quality of the service it provides. The paperwork and formalities of getting Legal Aid must be kept to a minimum, since they often appear to be another part of the system that ends in jail.

POLICE:

Native communities are entitled to receive the same or higher standards of policing as non-native communities.

Each native community should have the choice as to whether they wish to be policed by a native police form of their own or by the Ontario Provincial Police or a municipal police force. For those communities that choose native police, these should receive training, powers and pay equivalent to non-native police. They must not in any way be a second-class police force, but must be trained in the special problems of operating within two cultures, two systems, two laws. The same opportunities should exist for native women in police work that exist for native men.

The rights of native people to their property and to the privacy are often disregarded by the Ontario Provincial Police, and this attitude on the part of the police often creates ill feeling.

For those communities that do not choose to have an all-native police force, and for those native people who live outside native communities, the police badly need training in understanding native people. This training should include a basic understanding of native language, an awareness of the effects of the Indian Act, treaty rights to hunt and fish, and of the social structures and attitudes of native cultures and people. This training should be conceived and carried out by native people themselves. As much as possible it should take place during the policeman's initial training and indoctrination period, but should also be an upgrading course. This special training is needed not only for the Ontario Provincial Police, but for all police forces that operate in areas with a substantial native population.

There should be a genuine effort by the Ontario Provincial Police to hire and train native officers. The hiring process should not be hampered by formalities or educational requirements where an individual is otherwise suitable. On O.P.P. hiring committees, in the hiring of native officers, there should be native representation.

An effort should also be maintained to foster good relations between the Ontario Provincial Police and the communities they patrol. With this in mind, a permanent liaison officer should be appointed by the Ontario Provincial Police to deal with specifically native problems. In towns and cities with large native populations, similar positions should be filled. As often as possible, this officer should be bilingual, speaking the native language of that area.

The jurisdiction of the Ontario Provincial Police should extend to a reserve only where that reserve has no police force of its own and requests Ontario Provincial Police policing. The presence of an uninvited "foreign" force within the community, entering only to remove members of that community for punishment, takes on a sense of an occupying army and leads to resentment of the police, the system they represent, and the laws they enforce.

On the other hand, adequate police protection should not be withheld from native communities because they are too small or too isolated to warrant a full-time policeman.

Where there is a high percentage of native people living near a non-native community, there should be native input into the local police commission, either in the form of a permanent member or in the form of a continuous consultation with the native community.

COURTS:

- a) Where possible, courts should be held in native communities. This would bring the administration of justice into the community, where justice might not only be done; it would be seen to be done. In some northern places, magistrates have consulted with community members. In any case, the court operating within the community would mean that everyone, and not just the accused, could see the system function. Another advantage would be that witnesses would find it easier to attend a hearing nearby.
- b) Pre-sentence reports are frequently submitted without any native input. A pre-sentence report on a native defendant should include the views of the band social counsellor, the chief and council, or other knowledgeable native people. Too frequently, they consist only of reports from government officials, school teachers or parish staff who are themselves from a different cultural base.
- c) In sentencing, courts should take care that the sentence should be directly related to the offence wherever possible. The Law Reform Commission of Canada has recommended that "some offenders should be diverted out of normal criminal trials into forums more appropriate for arbitration and conciliation. Restitution to the victim, community service and probation are much more humane, at least equally effective in preventing recidivism, and far cheaper ways of dealing with many offenders whose minimal involvement with criminal activity or lack of dangerousness doesn't necessitate incarceration". These ideas apply equally to native people.

There should be more emphasis placed on reconciliation and compensation, which take place within the community, rather than jail terms, which take place outside the community. Where jail terms are imposed, consideration should be given to the shorter life span of many native people and to the hardship of being in a place where no one speaks one's language, where the food and environment and people and values differ radically from one's own, jail should be used very reluctantly and only to protect the community from dangerous offenders. Wherever possible, sentences should be served within the community and among native people.

Fines tend to have little relevance, and often through lack of money, native people end up in jail where non-native people would simply pay the money. Since the fine, as deterrent or punishment, has little relevance to the native community, its use should be decreased. In cases where the offence is directly traceable to the use or abuse of alcohol, the emphasis should be on effective treatment and not on a punishment that the community would find harsh and unrelated to the actual seriousness of the offence.

More sentences should involve work within the community, where the accused's family will not suffer for an offence committed by the accused, and where the entire community can benefit from the work done by the accused. The damage done to native people by prolonged stays within institutions often does more harm to their communities and themselves, both while they are away and when they are released, than the sentence does any rehabilitative or preventive good.

Fines are a major sore point in our system of justice. Up to half the native people in jail in some areas are there for non-payment of fines. We recommend that fines, where they are imposed, should be based on the amount the defendant earns, and that prison should be used to enforce non-payment of fines only where all other methods of enforcement are unsuccessful and the accused has the means of ability to pay.

- d) The system of halfway houses should be used as an alternative to jails whenever possible, and an effort should be made to establish native halfway houses, with trained native staff, to deal with specifically native problems. This is not a system of favouritism, nor are any of the "special" provisions proposed here; it is a different system for people who are different and for whom the usual system has proved itself not to be working.
- e) There should be more justices of the peace appointed for native communities both in the more isolated northern reserves and in the southern areas. They should be appointed under both Ontario statutes and the Indian Act.

Section 107 of the Indian Act states: "The Governor in Council may appoint persons to be, for the purposes of this Act, justices of the peace and those persons have and may exercise the powers and authority of two justices of the peace with regards to a) offences under this Act, and b) any offence against the provisions of the Criminal Code relating to cruelty to animals, common assaults, breaking and entering and vagrancy, where the offence is committed by an Indian or relates to the persons or property of an Indian".

In isolated reserves, a native justice of the peace could provide speedy trials where a judge would only appear once a month. The present system of multiple adjournments that seems to prevail in courts in Ontario today, leads many native people to plead guilty rather than face long delays in the adjudication of their cases, especially if each adjournment means a long trip to and from the reserve with no resolution of the accusation against them.

A second great advantage of justices of the peace on reserves is that of bail hearings. Where there is no local justice of the peace, a native person taken into custody by the police must be taken many miles into town to go before a justice of the peace there. When, after a bail hearing, that person is released, the police often will not take that person home, and he is left alone in a strange place without money or means of getting home.

Another advantage of the justices of the peace on the reserve would be that native people would be involved directly with the enforcement of their own laws: the reserve by-laws which such a justice of the peace would be empowered to adjudicate on. For those people who choose to continue to work within the existing system, reserve justices of the peace would provide a forum that could be conducted entirely in the native language and would also provide training for potential native judges.

f) For those people who appear before provincial courts, the existing system of courtworkers should be continued and expanded. The courtworkers provide reassurance for the accused, and guide that person through the formalities of applying for legal aid, obtaining a defence counsel, understanding courtroom procedures, understanding the language of the courtroom, and deciding on how to plead. Often the role of the courtworker extends beyond that of a guide and into that of quasi-defense counsel. More emphasis should be placed on the courtworker as an integral part of the court, but at the same time it is dangerous to assume that the presence of such a courtworker places the native accused on the same footing as a non-native accused; the court must at all times recognize that a courtworker merely acts as a crutch and that the handicap that made the courtworker necessary continues to exist. The court and the judge must try to be as flexible as possible in formalities and legalities in order to permit justice to be done. The courts must at every opportunity exercise their equitable jurisdiction rather than apply the strict letter of the law.

g) Where possible, judges who deal with native people should have an understanding of the culture and language of the people they deal with. A course for judges, similar to that for police, run and created by native people, would assist in achieving this goal.

h) An Indian who is alleged to have committed an offence on a reserve shall have the choice whether he wishes to appear before the usual provincial courts or before a special Indian tribunal known as the "Peacemakers' Court". Where the accused has an election under the Criminal Code, and one of his options is the Provincial Court, then the "Peacemakers' Court" shall be an alternative, too. Where the accused has no option, such as a charge of murder, the "Peacemakers' Court" would have no jurisdiction.

The "Peacemakers' Court" would be composed, for instance, of three members of the band who would be respected by everyone. The procedure would be informal, and would take place where necessary in the native language of the band. The emphasis in the proceedings would be on a less formal and legalistic procedure. Reconciliation and compensation would be the central objectives of the court; settling problems within the community as well as punishing offenders. While the jurisdiction of the court would be the same as that of a Provincial Court, it would also fulfil the function of a Family Court in its ability to deal with family matters and with juveniles, and would be able, on an informal basis, to settle matters of a civil nature between band members where both parties submit to the court's jurisdiction. This type of traditional court would reflect the values of the community and would enhance the pride of the group through its emphasis on internal settlement of internal problems.

Courts on reserves following native custom are not new in North America or Canada. "Peacemakers' Courts" function at this time on Iroquois reserves in New York State pursuant to a state law recognizing the courts and their jurisdiction. Various tribal courts have existed in the western United States for over a century.

In Ontario, the Six Nations reserve had traditional courts functioning until the 1920's, and their jurisdiction was recognized in fact rather than law until that time. The necessary statutory implementation would be both federal and provincial and could be drafted by the native people and then recommended for passage to the governments. This would, again, not be the creation of a "second-class" system of inferior quality, nor would it provide special treatment; it would be a carrying into effect of the principle that the values and laws a court applies and the ways it applies them should be a reflection of the attitudes and values of the community. In a different community, different courts are sometimes necessary.

If the government is not indeed following a policy of assimilation then the native people as sovereign nations have a right to a system of justice which reflects their culture. This right has never been surrendered.

Appeals from decisions of the "Peacemakers' Court" could be taken in the normal way either to County Court or to the Supreme Court of Ontario by way of stated case.

There should be more legal aid assessment officers in native communities. Even with the recommendation that legal aid may be approved by telephone, that was made by the task force on legal aid in Northern Ontario, eligibility for legal aid could be determined faster and easier, by for instance, the band administrator than by an outsider unfamiliar with the reserve or its people or their circumstances. Also, this would reduce the delays in supplying legal aid and this might reduce the number of unnecessary guilty pleas.

The possibility of a legal or para-legal person from a native community travelling from native community to native community to help in social as well as legal problems is one that has been found desirable in Northern Ontario. Such a person would provide advice on a wide variety of subjects and would prepare people for court better than a duty counsel who may not speak the language or have the time to deal with each individual case.

- k) In exercising its' flexibility in procedure, the court must always keep in mind the good of the community as well as the upholding of the law. In matters of juvenile cases, the removal of a young person from the community during his formative years will tend to alienate that person from the community when he returns, and the taking of children from their parents should be done by the court only with the greatest reluctance and as often as possible only where there are other members of the community that the parents are willing to allow to look after the children. The removal of children from the community is the first step toward the destruction of that community.

Young people sent away from their homes to reform institutions often return home more sophisticated in criminal activities than when they left, and may corrupt other, younger people. This has often happened in the past, and while it may be too late to correct past mistakes, and damage, at least future occurrences can be decreased.

INSTITUTIONS:

The crimes that native people are convicted of tend to be less serious than those non-natives are convicted of, as indicated by various studies. This in general means that provincial institutions, where people are sent, who have sentences of two years or less, have a higher proportion of native in-mates than federal institutions. In all forms of correctional institutions, federal and provincial, adult and juvenile, male and female, the number of native in-mates is far out of proportion to the native population of Ontario.

There have been, in the past, a number of obstacles to reaching the in-mate population. Distance is not easily overcome, but matters of policy which constitute obstruction to helping these people must be removed.

Support from both the government and the native organizations must be given to existing native Brotherhood and Sisterhood groups and other native self-help groups within all federal and provincial institutions, including training schools. These groups were established in order that native people coming into institutions would be able to meet and form programs that would enable them to keep contact with their own culture, traditions, and religion, and develop in them a sense of dignity.

With this in mind, it should be stated that if incarceration is necessary, the individual should be placed in an institution that is in the general area of his home. For example, a person from Northern Ontario should be placed in an institution in Northern Ontario. To send people far from home, to effectively deny them visits from their friends and relatives through distance, and to place them in an institutional setting that is more alien to them than to other in-mates, is a severe sentence. It should, we repeat, be used only in extreme cases.

As in all other programs, care should be taken that the staff of an institution have a proportion of native people similar to the proportion of native in-mates in the in-mate population. Native liaison officers should be appointed to all federal and provincial institutions as soon as possible.

Native in-mates often find it difficult to express their feelings to a non-native, no matter how highly qualified that person may be.

Courses in cultural education and in vocational up-grading should be designed so that they may be completed within the in-mates minimum sentence. Sometimes an in-mate's sentence ends before they can finish the course they are taking. The courses should be designed and instructed by native people, and would enable the in-mate to deal with society better through an awareness of cultural identity and through providing employable trades.

The obsolete machinery available in institutional vocational training courses is not conducive to employment on release.

The workload of the specialists attached to the prison system is far too heavy to be of help to any particular in-mates. For example, the psychologist in one federal institution in Ontario has what breaks down to 9 minutes and 27 seconds per in-mate per week. Additional staff is vitally necessary.

As well, native organizations should undertake to visit institutions more often, to help native in-mates keep in touch with their people. Especially in training schools, increased contact is necessary to prevent deepening social alienation and recidivism.

Institutions as they now operate, do not rehabilitate. They do not provide a deterrent. Often they act as a bar to an in-mate's employment on release.

The various studies that have been made on natives and the law show that, while proportionately more native people get into trouble with the law, by far the greatest part of this trouble involves minor offences. For these lesser offences, many people are sentenced to more than two months and less than two years, and find themselves in provincial institutions.

Native in-mates in provincial institutions are perhaps even more neglected than those in federal institutions. The administration of each institution in Ontario seems to have the ability to choose how much contact with the outside it will permit native in-mates, and how "native" it will permit them to be. Often these administrators forbid or actively discourage the formation of Native Brotherhood and Sisterhood groups in provincial institutions. Yet these organizations, through their activities and goals, play a role in rehabilitating the native in-mate that the non-native administration can neither replace nor fully understand. These obstructions should be removed quickly.

PAROLE AND AFTER-CARE:

- a) In parole applications, where the applicant requests this, there should be a native person present. This would give the applicant a sense of not being so alone, of having people backing him up.

In connection with increasing their contact with native inmates, native organizations should sponsor more inmates for parole.

- b) The Parole Board in other provinces has some native representation, though this is not in proportion to the inmate population. There should be natives on the Parole Boards in Ontario.

There have been a number of complaints by inmates applying for parole that the attitudes of the members of the Parole Board are such that they tend to stereotype native people. As was recommended for police and judges, these people should be familiarized with the realities of native life and culture through a course established and run by native people. Placing native members on the Board is insufficient if there are few native members and the attitudes of the other members remain unchanged.

- c) In preventive programs, native inmates can be used as resource people to explain the procedures and consequences of involvement with the criminal justice system. This would act as a deterrent, especially for younger people.

- d) There should be more native halfway houses. A halfway house run by non-native workers is sometimes viewed by native people as an unfriendly place. A good example of this type of situation is the fact that, in detoxication halfway houses in Toronto, natives referred to one house stayed there about three times as long as any of the other places they were sent: this is directly attributable to the fact that there was a native staff member there.

- e) The report to the federal Law Reform Commission by Dr. Schmeiser noted that native people rarely get probation since the network of probation officers in areas where native people is thin. The result is jail sentences for native offenders where other people would receive probation because they are accessible. We recommend that there be native probation officers appointed for those areas where native people live, both so that the courts may feel at ease dispensing probation to native people and so that the probationer may find it easier to communicate with the person supervising his probation.
- f) Eventually the responsibilities of probation, parole, after-care, Children's Aid Society, and welfare workers should be transferred to band social counsellors on reserves and to native people in urban settings to the extent that native people are the objects of their responsibilities. These band social counsellors would receive special training in order to qualify for their positions, and again an otherwise qualified person who could do the job well should not be disqualified for lack of formal education. These social counsellors should have the same pay and powers as provincial and federal employees fulfilling the same functions. Additional funding should be supplied so that they may visit band members or members of their communities in Ontario Training Schools, provincial and federal institutions.

RECOMMENDATIONS:

- 1) In each program, native input and native staff should be in proportion to the program's involvement with native people.
- 2) Consultation must be continuous and through a permanent body.

PREVENTION:

- programs in community development;
- programs in economic development;
- a conference on the Native People and Alcohol should take place in the near future;
- youth and leadership programs;
- cultural programs;
- sports and recreational programs;
- education of the general public about native people;
- education about the legal system for native people;
- education about Legal Aid for native people.

POLICE:

- native communities have a choice between a first-class native police force, the O.P.P., or a municipal force;
- native women should have equal opportunities in police work;
- a training course in native rights and culture by native people for police dealing with natives;
- O.P.P. should hire more native officers;
- permanent liaison officers for O.P.P. and municipal forces;
- native input into Police Commissions.

COURTS:

- courts should be on reserves;
- sentencing should be more based on reconciliation, compensation and restitution, and less on fines and incarceration that are

often unfair in their effect;

- community service should be an alternative sentence;
- halfway houses should be used more frequently;
- justices of the peace appointed under both provincial statutes and S. 107 of the Indian Act, and should be located within native communities for purposes of bail and for minor offences;
- the existing system of courtworkers should be continued and expanded;
- judges dealing with native people should receive special training;
- a "Peacemaker's Court" with an informal procedure adapted to native culture, shall be an option to any Indian accused of an offence on a reserve;
- there should be more legal aid assessment officers on reserves;
- a para-legal resource person would be useful to northern reserves;
- the greatest care must be taken in removal of juveniles from the community - this must be done only as a last resort.

INSTITUTIONS:

- support from both government and native organizations for in-mate groups in provincial and federal institutions;
- in-mates placed in institutions near home;
- native staff in proportion to native in-mate population;
- native liaison officers;
- courses designed for native in-mates, courses than can be completed within minimum sentences;
- more specialists to relieve the heavy workload.

PAROLE AND AFTER-CARE:

- more and easier sponsorship of in-mates for parole;
- native representation on Parole Board;
- course in native culture for Parole Board;
- use of native in-mates in preventive programs;
- more halfway houses for native people;
- more native probation officers, in native communities;
- band social counsellors to replace other social workers.

APPENDICES:

These papers have been prepared by various individuals and organizations to expose specific problems in certain areas and to recommend specific changes.

The preceding general brief covers problems that exist throughout Ontario with recommendations that also apply to the entire Province (and, if the native people in other areas find them desirable, in other areas as well).

TREATY AND ABORIGINAL RIGHTS TO HUNT AND FISH:

More and more frequently, Indian people following their traditional ways of hunting, fishing and trapping are coming into conflict with provincial and federal laws designed to restrict these activities. In particular, people are being charged under the Ontario Game and Fish Act and under the Ontario Regulations under the Federal Fisheries Act.

Federal and Provincial fishery and conservation officers have no knowledge of native rights to hunt, fish and trap, and through their ignorance place restrictions and cause problems where none should exist. Often it is cheaper and less trouble to obey these people or plead guilty than to complain to their superiors or fight in the courts.

Indian people are often called "the first conservationists" and have a deeper respect for nature and its fragile resources than others. To use the excuse of "conservation for all races" as a tool to restrict Indian rights is not valid.

Our position is that the rights of the Indian people to pursue their traditional ways of hunting, fishing and trapping on reserve and Crown land should not be limited by any government statute or regulation, federal or provincial, unless specifically surrendered by treaty. Any statute that does not conform to this is in breach of treaty and in defiance of Indian aboriginal rights.

We therefore demand that those statutes which purport to restrict or limit in any way the means of, or the right to hunt, trap and fish (and in particular, the Game and Fish Act, and the Fisheries Act), be amended to respect these rights, and that the officers who are charged with the enforcement of these statutes be taught both to respect Indian rights and to honor the territorial integrity of Indian reserves.

Association of Iroquois and Allied Indians,
Grand Council Treaty Number Three,
Grand Council Treaty Number Nine,
Union of Ontario Indians.

JUSTICE SYSTEMS IN NORTHERN ONTARIO AND THE NATIVE PEOPLE

ACCREDITED EFFORTS

The biggest single step so far in prevention and decreasing the numbers of Native People lodged in correctional institutions has been the evolution of the Native Court Counsellor, according to a subcommittee of the Law Society of Upper Canada. Every provincial judge who has had occasion to have a Native Court counsellor perform in his court has praised the work of these individuals. The subcommittee further recommended "that the employment and training of Native Court Workers be continued, encouraged, expanded and funded...." (2)

There are only 17 courtworkers in Ontario and they cannot begin to cover properly a province the size of Ontario.

CASELOAD

1973 - 1974

<u>Courtworkers</u>	<u>No. of known Persons Charged</u>	<u>No of Known Charges Against these Persons</u>			<u>Total</u>
		<u>C.C.C.</u>	<u>L.C.A.</u>	<u>OTHER</u>	
17	7,287	6,444	4,489	727	11,660

The Native Court Counsellor is expected to do a lot of work in other areas as this report from the co-ordinator shows:

Report on Native Court Counselling Services to Ontario Federation of Friendship Centres General Meeting, May 1974

The major activity of the courtworkers continues to be bringing knowledge of the legal system to the grass roots Native People and do so by appearing in courts, personally advising on the seriousness of charges, the court procedures, and the availability of legal and social assistance.

There are other services which the courtworkers render and these vary from Centre to Centre.

Some workers are instrumental in obtaining passes for those who are in correctional institutions and this enables these people to attend school or a job. Many of the courtworkers visit incarcerated Natives to maintain contact and to assist in their release plans. Some of the courtworkers do translations (Cree, Ojibway), in the courts. Some have also assumed responsibility on probation or parole.

A couple of the Centres were involved in conducting workshops on the legal system, the most notable being a sixteen week course set up by the Kenora Fellowship Centre for one of the nearby reserves.

A few of the courtworkers have been approved to fill out legal aid applications in areas where the acquisition of legal services is difficult. The courtworker in Geraldton has even been authorized to do the financial assessment required before legal aid assistance is given. The courtworker in Sault Ste. Marie has been appointed Commissioner of Oaths.

Statistics reflect the probability of police "throwing the book" at persons charged. The average is two charges per individual.

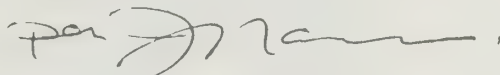
The courtworkers therefore, cannot confine their work activity to one locale, but visit the courts in other areas such as Wawa, Blind River, Wikwemikong, Gore Bay, Forest, Dryden, Sioux Lookout, Ignace, Morson, Brechin, Gogama, Foleyet, and Chapleau.

In the far north where not only the people, but local leaders as well, on the Reserves are totally unaware of the Canadian system of justice, a courtworker working from the offices of Grand Council Treaty Number Nine, has been busy translating the book Law, Law, Law, and the legal aid information brochure into Cree syllabics and is distributing the translated material to the Chiefs and the people of the far north. More educative communications needs to take place and we attempt to do this through the "Ontario Native Experience".

Accredited Efforts - continued

Some major recommendations have been made to facilitate and ease the workload of the courtworkers and the problems of their clients. See Legal Aid and the Native Person - Draft.

Respectfully submitted



D. Cromarty, Co-ordinator

Since in most charges use of alcohol is a factor, there is work just now starting in this field notably by Grand Council Treaty # 9 and the Ontario Federation of Friendship Centres. The problem lies in the reluctance of the provincial and federal governments to make a serious attempt in working with Native groups. An amount so small, \$22,500 was granted and on a month to month basis yet by the Ontario government to combat the effects of alcohol. (This under the Ministry of Health, George Potter responsible - 1973.)

But at any rate we are trying and all reports indicate, when given the chance, we can indeed work out some of our problems.

We have demonstrated our ability.

THE BARRIERS

Within the context of justice we identify the barriers which prevent approach and stop progress;

The Distance Barrier;
The Language Barrier;
The Cultural Barrier;
The Trust Barrier;
The Communication Barrier.

The problems are outlined first and then recommendations made later.

THE DISTANCE BARRIER:

To most southern Ontarians "up north" is the Muskoka-Huntsville region, a distance of approximately 100 miles from Toronto, the seat of Provincial power. The real north is above the 50th parallel or the CN line some 500 miles from Toronto. Even from this railway line, it is hundreds of miles to Native communities like Big Trout Lake, Fort Severn, Winisk, and 22 other settlements all only accessible by aircraft. Travel is dependent on the weather. At freeze-up and break-up these communities cannot be reached at all. Scores of other Reserves and settlements are accessible only by boat or if there are roads they are more common, like moose trails. They are hazardous and safe only by foot. Travel by foot can take several days. And that doesn't mean help will be forthcoming. Distance cuts off access to opportunities in most areas and most certainly evident is lack of access to legal aid and justice considerations. Due to distance the following are lacking:

Police Presence - Unquestionably there is social disruption in many communities. Police can make only periodic patrols or make calls on request. We know many people live in fear when the boys are whooping it up.

Court Presence: The principle demonstrated here seems to be to bring people to the law rather than bring law to the people. Even with police presence there is conflict - for what is law to the whiteman is not necessarily law to the Indians. The laws were not made by them.

MOSESIE ETOK..... a policeman

"In 1971, the Council decided that they wanted to have a local person for a policeman. So they asked me if I wanted to take the job. When I said "yes", they asked the people if they wanted me and they said I would be O.K. It's sometimes hard to do this job because even if I want to follow the laws of the community, sometimes I can't and have to follow the Canadian law. I used to spend much of my time helping people before trouble began, but now I seem to help people only when they ask." (3)

Probation Officers - The network of probation officers in the northern areas is thin. The result is jail sentences for Native offenders whereas in other places people would receive probation because probation officers are available. The court is reluctant to dispose a case on a probation basis.

Alternative detention/sentence - There is definite need for alternative court sentences in remote areas of the north and to set up detention facilities as well. Presently persons sentenced to short term confinement are transported hundreds of miles to be detained. When released these persons often have no way of returning home.

Lawyers - There are few resident lawyers in northern Ontario. A lawyer finds it financially impractical to have a law practice in towns with a population of 2,000 or less. Before Tebahkoonega-wenenwug, "the people who judge" arrive legal counsel is always needed.

THE LANGUAGE BARRIER:

Our older people still speak only their Native tongue, Cree, Ojibway, and Unuit. Many cannot read nor write English. The whiteman's law is not written in the Native languages and if it were, it would still be difficult to comprehend. Perhaps real understanding of the meaning of the law will never come to be, but for certain, somehow, the Native People must begin to understand their own rights within the law and legal recourse available to them. White people do not speak Cree or Ojibway and Native People do not

understand English. But it is the Native person who bears the brunt of the problem.

Understanding Charges - Unless capable interpreters are available during court proceedings, and often they are not available, the Native person just does not understand the charges and the words behind them.

Failing to Appear - Distance and not understanding directions and summonses contribute to the failure of accused persons to appear in court. In one court sitting in Sioux Lookout, under our observation, eight persons out of 18 failed to appear.

Dejection and Despondency - Incarcerated Natives, especially women, become unbelievably despondent and completely withdraw within themselves when sent far away from home. The withdrawal is a cause for concern of institutional authorities. Failing to communicate in their own tongue is one of the factors contributing to withdrawal.

THE CULTURAL BARRIER:

If justice is to be brought to the Native people, their traditional culture and contemporary culture must be understood. More important is recognizing and demoralizing effects of white encroachment. Where once there were sets of ways and values and respect for man and earth, there remains only fragments of the positive and traditional way of life. Once it was live and let live and forgive and forget. There were no defined rules and regulations either legal or moral. Now, they are needed along with an acceptable system of dealing with what goes wrong in a Native settlement.

While an understanding of Native culture and the impact of white society on it is essential, equally essential is the participation of Native people in the development and administration of justice. Native people can indeed be placed in decision making positions of government which can allow for proper consideration of the life style of the northern Native peoples. Native people are different and so are other minority groups. For being different they have to pay the price.

Discrimination - Police pick on Native People. Maybe they do not like their brown skin or their black hair. Maybe they think we should all wear ties. Maybe their work performance is measured by how many people they charge, not how many they were able to assist and protect.

We suspect the police practice on Native people. One O.P.P. officer not knowing anything about Indians tried an experiment. He talked to them, helped them and tried to be a friend. This did not work. Then he tried another method. He got rough and tough and bashed heads. This did not work either. Police will enter homes and all the Native People can do is complain. The complaints fall on deaf ears.

THE TRUST BARRIER:

Native People place very little trust in what the whiteman does for him, but more often than not, they go along because there does not seem to be any other choice. What is more astonishing is that white people do not trust the Native People at all. They say they do in words, but their actions speak otherwise.

For every recognized and needed programme, government officials are reluctant to give total responsibility to a Native group. Before granting funds, restrictive criteria are set down. It takes years to get a programme under way. Even after approval, it takes months to process cheques. Once processed the federal government says, use provincial monies first. Many times they set up a reimbursement arrangement. We are supposed to spend the money first, then file a claim. But how can anyone spend money they do not have in the first place? It will never be admitted, but conditions attached to grants smacks of absolute distrust.

The integrity of Native organizations can easily be assessed. First, there are the people involved. (By far the majority are hardworking, sincere and dedicated). Second, audited financial statements are issued every year.

Typical of the distrust is this letter from the Ministry of Health which reads in part:

"The Committee has asked me to confirm that the funding of your project will continue on a monthly basis and we may wish to discuss your report further with you following our next meeting in January."

THE COMMUNICATIONS BARRIER:

Communications is an all encompassing field and can have a tremendous impact on Native People. They can talk to others far away, they can see what happens elsewhere, they can read about events and situations. In short, it can be very educational and education is knowledge and a knowledgeable person can be very independent.

Through communications most obstacles can be overcome. There are telephones in the north and "shortwave radios" but not everyone has these. Besides this type of communication is only on a person to person basis. (If the radios are not too busy). General communication is needed among Native communities; it is needed from one community to another; and from the south to communities in the north.

The problem may not be so much in acquiring facilities, but putting forth content which will be useful to Native People. As an example, in the mid-north there are communication's vehicles of all sorts, yet Native people in this area still do not know about matters which concern them directly. Instead, they get a steady diet of the things white people are interested in. (Most of it American). They are more knowledgeable about the affairs of the Americans than about the affairs of Native groups and organizations in Ontario and in Canada.

RECOMMENDATION

Many, many recommendations have been put forward by Native groups which if implemented, would correct a lot of problems. But the hard fact is that all government departments and agencies touched by the recommendations and those problems which fall within their authority and responsibility will not react quickly nor take immediate steps to implement the recommendations and resolve problems. The cost alone in some cases would be prohibitive. Roads will probably never be built to all Native settlements in the north. Other amenities like hydro services, telephones, television, newspapers, etc, will take some time.

At another time, at another place we shall continue to press for complete elimination of northern barriers but for now we want to reach the attainable.

With that in mind, we are making one major recommendation which embraces the majority of the nagging problems confronting Native People in the north.

Under the following understanding:

- 1) responsibility to be given to Native People;
- 2) control to be vested at the local level;
- 3) Native political divisions to be set aside,

we propose the establishment of a Native Para-Legal Society to be subsidized by the federal and provincial governments but left independent of government control. The bias of the Society will be to respond to legal hardships and to bring about justice and the sense of it to Native People in Ontario. The responsibility of the Society, its operations and direction, will be decided by Native People and the para-legal workers, trained and hired, will be sponsored and supervised by a network of Native groups throughout Ontario. For the Society to be effective it must essentially be a process of Native People helping Native People. The Native Para-Legal Society will not displace existing programs but will complement them.

RECOMMENDATION - (continued)

The need for workers in the para-legal role has been proven through the Court Counsellor program and has been well documented in a pilot project which was conducted by Harvey Savage on the Whitedog Reserve. A detailed account of incidents in the pilot project shows that a combination of social counsellor and lawyer is needed to work on problems. The principle is equality of treatment and this can only be achieved through knowledge of the law and individual rights within the law.

ACCOUNT OF INCIDENTS - PILOT PROJECT

<u>INCIDENTS</u>	<u>LEGAL KNOWLEDGE REQUIRED</u>
1) Automobile Accident	Insurance liabilities Unsatisfied Judgement Fund
2) Assisted band member to obtain child back from mother court had declared unfit.	Basis of court order
3) Discussions with C.A.S. on the above	Child Welfare Act
4) Hydro flooding problem	Research on damages and action to follow
5) Signatures for Thrift Store Incorporation	Companies Act
6) Issues in Hydro flooding	Indian Act and other legal issues
7) Addressed teenagers on Criminal Law System	Criminal Code of Canada
8) Assisted in collecting unpaid wages from camp	Labour Relations Act
9) Advised on charge of assault and injury	Compensation for Victims of Crime Act
10) Drew up Power of Attorney	Powers under Power of Attorney

This is only a partial list of close to 100 reported incidents.

RECOMMENDATION - (continued)

The role of the Native Para-Legal Society is best described when the job descriptions of para-legal workers is laid down. Some of the duties would be:

- 1) Arrange police liaison meetings between local leaders and the O.P.P. to familiarize officers of different situations in Native communities;
- 2) Familiarize Native People of their rights and insure no court proceedings take place until a person has been advised of his or her rights;
- 3) In the absence of interpreters act in that capacity in the courts;
- 4) Work with residents in any given community to establish alternate detention systems such as Halfway Houses;
- 5) Work with Reserve Councils to set up local by-laws and procedures to insure proper policing;
- 6) Show cause to have Native People sit in judgement of cases and establish mechanisms for same;
- 7) Gather and distribute information on all legal services and resources through media, schools, brochures, slides, films, etc;
- 8) Act as a liaison and contact person to parolees, persons placed on probation and coming out of institutions;
- 9) Act as legal assessment officers in Native communities;
- 10) Act as legal counsel before arrival of the court;

- 11) Submit reports of police harassment and brutality and any behaviour which violates the rights of an individual and any undue influence of the police on the court when sentences are passed;
- 12) Support activities of a recreational/social nature to meaningfully occupy time of the young people;
- 13) Deal with problems which may end up in court such as non-support, child abuse, etc;
- 14) Deal with applications for legal aid assistance, pensions, welfare, mothers/fathers allowance, unemployment insurance;
- 15) Report any questionable activities and practices of public officials such as abuse of authority and responsibility;
- 16) Assume responsibility to supply background information on applicants for parole;
- 17) Identify problems and refer to proper agencies;
- 18) Arrange consultation meetings with other agencies such as welfare offices, Children's Aid Society, etc;
- 19) Assist in bail hearings;
- 20) Take sufficient training and seek appointments as Commissioners of Oaths and Justices of the Peace;
- 21) Utilize existing legislation under the Ontario Human Rights Commission to secure special considerations from the Ontario government in awarding job contracts for government projects such as roads, clearing, etc.;

TRAINING:

A special course would be needed to train the para-legal workers in carrying out their responsibilities and to deal effectively with problems.

INTRODUCTION:

In the northeastern part of Ontario, courts have been held on reserves and in various towns on a monthly basis. Due to the extreme amount of time that passes between court sessions, the case loads of these courts are enormous.

Judicial problems arising between the native people and law enforcement agencies (police, probation officers, legal aid, courts, etc...) are largely due to a communication failure. This is communication in terms of the usage of the telephone, radio, mailing system, complicated legal terminology in legal documents and in judicial formalities in courts. However, a very large part of the problem is caused by the fact that throughout the north, native people still persist in utilizing their culture, language and their own means of solving civil matters - matters usually taken care of by the courts in white society. Therefore, natives do not value the court's opinion on important issues, but do have considerable respect for the court in its role as "peacemaker" in the communities.

Transportation can also prove to be a very large problem for those people who must travel to attend courts, interviews, etc. In order to have legal representation, a native individual may have to travel from six (6) to two (2) hundred miles, sometimes with the help of a legal aid warrant, but usually at his own expense, to obtain such representation! To add to the difficulties experienced in getting there, in some cases the native person arrives, only to find that there has been a remand, and he must return on a later date for the trial.....

However, I am sure that there must be solutions to these problems - solutions which could ease the needless suffering of these native people.

NATIVES AND THE CRIMINAL JUSTICE SYSTEM

NORTHEASTERN ONTARIO

December 6th, 1974

Preparatory Summary By:

Ernest Rickard,
Court Worker

GRAND COUNCIL TREATY #9

COURT

As I have previously pointed out, courts in the north are held on a monthly basis and at any other time than actual court days, there are no lawyers in the area. I would also like to point out that the court dockets are usually very long and difficult. Another difficulty arising from the lawyer only being in the area on court days, is that it does not provide much time for the Duty Counsel to interview the accused and prepare the defence. Again, since the lawyer is only in the area on the court date, and the native offender cannot afford to travel to the lawyer, the amount of time available to prepare the defence is determined by the length of the docket - it could be a few hours or only minutes - and by the length of time the Duty Counsel has to spend in the community. This means, then, that the accused does not have counsel until the court is actually in session, and this usually necessitates a request by the Duty Counsel for an adjournment. In these cases, the court worker can assist by taking legal aid applications and by interpreting the criminal charges.

Another major difficulty is the lack of knowledge of the native offender of the court system, such as, that he has a choice to elect either a magistrate, judge, or a district court judge, to be tried by. In most cases, when this choice is made, the native is in a state of confusion, does not actually understand the whole process, and thus, makes a wrong choice. For instance, he may appoint a District Court Judge on a summary offence, and appoint a Magistrate on an indictable offence, such as manslaughter. Selections such as these have been creating difficulties in the courts that have been held in the communities. On serious charges, the District Court Judge is unable to travel to the Northeastern Ontario communities where the accused lives, and thus, the Native offender and his witnesses must travel to Cochrane or Timmins for trial. To do this, both the accused and his witnesses, must jeopardize their jobs by taking the time to travel to these locations to attend court.

Again, as stated earlier, they sometimes arrive only to find that the case has been remanded to a later date. Legal Aid has a system now, by which travel warrants are issued, but it has just come into effect, and is a slow process.

Financial assessments must be done by the legal aid committee before such warrants can be issued.

INSTITUTIONS (probations, parole):

The Correctional Institution most readily available to the Grand Council Treaty #9 eastern region is located at Monteith, Ontario, which is some sixty (60) miles in distance from the city of Timmins. This institution serves a large area, and accommodates approximately 200. Therefore, a large amount of native persons are either on probation, or are in other penal institutions far removed from their remote northern settlements.

There are only two probation officers serving the northeastern area of James Bay, one being a juvenile officer and the other being an adult officer. They have then, little time to discuss all matters concerning each probationer. This is caused by the lack of guidance techniques and the use of proper channels by the probation officers when dealing with the native probationer.

The probation officers have tried to get in touch with the probationer by sending him/her a letter stating when he would be in the area, and by requesting a progress report. This method has not been successful, and a new method is required.

At present, the only assistance available to the probation officer in the north is the native court worker. The court worker acts as a liaison officer between the probation officer and the probationer. Chiefs and Counsellors, parents and possibly the probationers closest friends, people trusted and who have knowledge of the probationers character and behaviour, should also be available to help the probation officer.

FLY-IN PATROL OFFICERS SCHEDULE

Ontario Provincial Police
South Porcupine Detachment
SOUTH PORCUPINE, Ontario.

Four (4) Ontario Provincial Police Officers

Two (2) officers - in Fort Albany

Two (2) officers - in Attawapiskat

Two (2) officers for Fort Albany consists of : one (1) Corporal,
one (1) Constable.

Two (2) officers for Attawapiskat consists of: one (1) Corporal,
one (1) Constable.

SCHEDULE

<u>Communities</u>	<u>Month</u>	<u>Days</u>	<u>Year</u>
Attawapiskat & Fort Albany	November	13 - 27	1974
" " " " " " " " "	December	13 - 27	1974
" " " " " " " " "	January	10 - 24	1975
" " " " " " " " "	February	7 - 21	1975
" " " " " " " " "	March	7 - 21	1975

